THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

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WRIT PETITION No: 2887 of 1995

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Dated 06-09-2005

Between:

P.Maneswara Rao.

..... PETITIONER

AND

A.P.State Housing Corporation Ltd., and another.

.....RESPONDENTS

ORDER:

The order of the first respondent, dated 17-01-1995, removing the petitioner from service, is the subject matter of challenge in this writ petition.

The facts, to the extent necessary for the purpose of this writ petition, are that the petitioner was appointed as Works Inspector in the respondents' organization in the year 1986. On 02-11-1992, a complaint was given by one Sri Seelam Nageswara Rao and four others of Tillakuppa village, I.Polavaram Mandal, East Godavari District, alleging that the Sarpanch of Tillakuppa village, the Mandal Development Officer of I.Polavaram Mandal and the petitioner had substituted benami beneficiaries in the place of original beneficiaries and that the entire amount, which was in the names of the beneficiaries, was withdrawn by the Sarpanch and utilized for the purpose of construction of his own building. A joint enquiry was conducted by the Mandal Development Officer and the Deputy Executive Engineer and the enquiry report was sent to the District Manager (Housing) Kakinada. The Mandal Development Officer, in his report, is said to have stated that the petitioner was guilty of the whole affair. The petitioner was suspended, pending enquiry, on the basis of the preliminary enquiry report of the Mandal Development Officer that the petitioner had withdrawn the amounts by impersonation and that the amounts sanctioned, in favour of Sri Seelam Nageswara Rao and four others, had been withdrawn without any houses being constructed. A charge sheet, containing

allegations of forgery and misappropriation, was issued against both the petitioner and the Assistant Engineer (Housing). The Special Deputy Collector (R.O.R.), Kakinada, conducted the enquiry and submitted his report, wherein he did not find fault with the Deputy Executive Engineer (Housing) and dropped the charges levelled against him, a minimum punishment was proposed against the Assistant Engineer (Housing) and a major punishment was proposed against the Works Inspector (petitioner herein). A show-cause notice was issued to the petitioner on 21-09-1994, to which, the petitioner submitted his explanation on 11-12-1994, and pursuant thereto the impugned order of removal was passed by the first respondent on 17-01-1995.

Sri G.V.Shivaji, learned counsel for the petitioner, would submit that the enquiry proceedings was held in gross violation of principles of natural justice and that the Enquiry Officer had relied on the statements of the officials of the Housing Corporation without their being subjected to cross-examination by the petitioner. Learned counsel would submit that burden is on the management to prove the charges in a duly constituted departmental enquiry, wherein statements of witnesses are required to be recorded, witnesses are required to be made available for cross-examination by the charge sheeted employee and on the basis of the evidence on record alone, the Enquiry Officer is required to submit his report. Learned counsel would submit that since the Enquiry Proceedings stand vitiated for failure to give the petitioner an opportunity to cross-examine the witnesses, the entire enquiry proceedings are vitiated and are liable to be set aside. Learned counsel would place reliance on the judgment of the Supreme Court in **UNION OF INDIA** v. **MOHD.IBRAHIM** (judgment in C.A.No.1034 of 2001, dated 05-02-2001) in support of his contention that the order of punishment imposed, on the statements of persons examined in the preliminary enquiry, is in violation of principles of natural justice and stands vitiated.

A counter affidavit is filed on behalf of the respondents, wherein it is stated that the petitioner was placed in-charge of construction of Weaker Sections Housing Programme at Tillakuppa village of I.Polavaram Mandal, that one Sri Seelam Nageswara Rao and four others of Tillakuppa had filed a petition alleging that the Sarpanch of Tillakuppa village had drawn the loan amounts sanctioned to them forging their signatures on the cheques issued by the Deputy Executive Engineer with the connivance of the petitioner and that the Mandal Development Officer and the Deputy Executive Engineer had enquired into the contents of the petition and had submitted their individual reports dated 29-11-1992 and 06-12-1992 respectively to the District Manager, A.P.State Housing Corporation Limited, Kakinada which revealed the involvement of the petitioner in encashing the cheques issued in the names of the beneficiaries. Pursuant to the report, a preliminary enquiry is said to have been ordered and the Assistant Manager (Administration) of the respondent Corporation is said to have enquired into the matter and to have submitted his report, according to which the beneficiaries of Tillakuppa village had not started construction of their houses but cheques had been issued in their names and those cheques were encashed by the petitioner by impersonation and forgery on knowing that the beneficiaries had filed a petition against the petitioner and that he had remitted the misappropriated amount into the Bank by means of demand drafts and had handed over the same to the Deputy Executive Engineer (Housing), Amalapuram. Since there was a prima facie case, disciplinary action was initiated against the petitioner and the Assistant Engineer (Housing). A charge memo was issued to the petitioner on 01-03-1993, to which, the petitioner filed his written statement on 02-04-1993 informing that he was cheated by the Sarpanch of Tillakuppa village in identifying the beneficiaries and wrong persons were introduced to the Bank and money from the Bank was withdrawn by them, that the Sarpanch had given Rs.52,580/- to him and that he had remitted the amount to the Deputy Executive Engineer (Housing) by means of demand drafts. A detailed report

was submitted by the Assistant Manager to the first respondent and the petitioner was placed under suspension vide proceedings dated 19-06-1993. The Special Deputy Collector (ROR), Kakinada, was appointed as an Enquiry Officer in modification of the earlier order dated 29-07-1993. Charges were framed, vide proceedings dated 30-09-1993, and an opportunity was given to the petitioner to represent his case in person on 22-11-1993. The Enquiry Officer, while concluding the enquiry report, had recommended that the Deputy Engineer (Housing), Amalapuram be let off with a warning as there was no negligence on his part, that a minor punishment be imposed on the Assistant Engineer (Housing) as he had failed to discharge his legitimate duties and that a major punishment be imposed on the petitioner as he had cheated the beneficiaries, tampered the office records, deceived the banks and misappropriated the corporation funds. Basing on the enquiry report, a show-cause notice was issued to the petitioner proposing the punishment of dismissal from service, a copy of which was served on the petitioner on 01-10-1994. It is stated in paragraph 4 of the counter affidavit thus:

> "It is submitted that as seen from the Enquiry report that the statements of beneficiaries of Tillakuppa village and benamy persons have been recorded by the enquiry officer and it seems to be the beneficiaries not cross-examined by the petitioner herein but he has given an opportunity to present his case in person before the enquiry officer on 22-11-1993. So it is not correct to say that the petitioner has not given an opportunity to prove his case. It is clear case of impersonation, deceiving of banks, tampering of records as he himself admitted in his explanation that he introduced the false beneficiaries to the bank and he himself remitted a misappropriated amount of Rs.52,580/. As the guilty of the charges have been established beyond doubt and he was given an opportunity to be hearted in person."

It is further stated that though the petitioner had not withdrawn the money directly

from the bank it cannot be ruled out that he is the person, who introduced the beneficiaries to the bank duly tampering the photo identity cards by affixing the photos of benami persons. It is also stated that a criminal case was filed against the Sarpanch, Assistant Engineer (II) and the petitioner herein, which is pending disposal. It is further stated that the petitioner was having Savings Bank Account No.1228 in Vijaya Bank, I.Polavaram, that he introduced the individuals to the Bank and got opened saving bank accounts in their names with thumb impressions, treating them as illiterates and that he had also fixed the photos of bogus persons on the savings bank accounts of the beneficiaries, though all the original beneficiaries are literates and had signed before the Enquiry Officer on the statements recorded by them at the time of enquiry. On receipt of cheques of the individuals, the same were filed in the Bank for collection and after collection of the cheques and the amount being credited to the savings bank account, withdrawals were effected from the savings bank accounts with the names and thumb impressions of the alleged beneficiaries, which was attested by the petitioner, on the withdrawal forms to withdraw the amounts from the bank. It is stated that the petitioner never asked for an opportunity to cross-examine the witnesses and had merely asked for certain records, copies of some of which were supplied to him on 21-10-1993 by registered post. It is also stated that all the persons involved in the case were enquired and their statements were recorded and it is only after a thorough enquiry that the enquiry report was finalized.

Sri K.Mohan Rami Reddy, learned Standing Counsel appearing for the respondents Corporation, would submit that the petitioner has approached this court without exhausting the alternative remedy of an appeal and the writ petition as filed, is therefore not maintainable.

It is necessary to notice that the order impugned in this writ petition is on the ground that the said order has been passed in flagrant violation of principles of natural justice. While exhaustion, of the available alternative remedy is insisted upon, at the stage of admission, the present writ petition is pending on the file of this court for a decade and at this length of time failure to exhaust the alternative remedy, cannot be a ground to dismiss the writ petition, more so, when it is alleged that the order passed by the first respondent is in violation of principles of natural justice.

A Constitution Bench of the Supreme Court in **STATE OF MYSORE** v. **SHIVABASAPPA SHIVAPPA MAKAPUR** held thus:

> "…….. For a correct appreciation of the position, it is necessary to repeat what has often been said that tribunals exercising quasi-judicial functions are not Courts and that therefore they are not bound to follow the procedure prescribed for trial of actions in Courts nor are they bound by strict rules of evidence. They can, unlike Courts, obtain all information material for the points under enquiry from all sources, and through all channels, without being fettered by rules and procedure which govern proceedings in Court. The only obligation which the law casts on them is that they should not act on any information which they may receive unless they put it to the party against whom it is to be used and give him a fair opportunity to explain it. What is a fair opportunity must depend on the facts and circumstances of each case but where such an opportunity had been given, the proceedings are not open to attack on the ground that the enquiry was not conducted in accordance with the procedure followed in Courts."
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> "…….. When the evidence is oral, normally the examination of the witness will in its entirety, take place before the party charged, who will have full opportunity of cross-examining him. The position is the same when a witness is called, the statement given previously by him behind the back of the party is put to him, and admitted an evidence, a copy thereof is given to the party, and he is given an opportunity to cross-examine him. To require in that case that the contents of the previous statement

> should be repeated by the witness word by word, and sentence by sentence, is to insist on bare technicalities, and rules of natural justice are matters not of form but of substance. In our opinion they are sufficiently complied with when previous statements given by witnesses are read over to them, marked on their admission, copies thereof given to the person charged, and he is given an opportunity to cross-examine them."

The grievance of the petitioner, which is not disputed by the respondents, is that witnesses were not examined in his presence nor was he given an opportunity to cross-examine them.

While the charges, undoubtedly, are serious in nature, such charges are required to be proved in a properly constituted domestic enquiry. It is no doubt true that strict rules of Evidence are not applicable to domestic enquiries. The fact however remains that a valid domestic enquiry has to comply with the minimum requirement of principles of natural justice, which would include giving a reasonable opportunity to the delinquent employee to cross-examine those witnesses, whose statements have been recorded in support of the charges.

It is only in cases where the charges are admitted by the delinquent employee that the need for conducting a domestic enquiry is obviated. The Enquiry Officer in his report refers to the fact that the petitioner, in his statement to the Assistant Manager (Housing), had stated that he had taken delivery of the cheques and material of the beneficiaries and that the material was adjusted to other beneficiaries who were in need of material, that he had encashed some cheques and other cheques were encashed by the benami beneficiaries, in his presence, after he had introduced them to the Vijaya Bank, I.Polvaram. The petitioner is also alleged to have stated before the Assistant Manager that the bogus beneficiaries had paid back the money drawn from Vijaya Bank, pursuant to which, he had taken demand drafts for Rs.52,580/- in the name of Deputy Executive Engineer and had

handed over the demand draft to him. The Enquiry Officer, however, placed reliance not solely on the alleged admission but also on the statement of the original beneficiaries to come to a conclusion that the petitioner had cheated the beneficiaries, tampered with the office records, deceived the banks and misappropriated Corporation funds. The beneficiaries were not examined in the presence of the petitioner nor was he given an opportunity to cross-examine the witnesses, despite which reliance was placed by the Enquiry Officer, on such statements and in holding the petitioner guilty of the charges. Similarly in the show-cause notice dated 21-09-1994, the disciplinary authority also took note of the findings of the Enquiry Officer regarding the statement allegedly made by the petitioner to the Assistant Engineer (Housing) and that he had given inconsistent explanations to the Assistant Engineer and the Enquiry Officer. The disciplinary authority relied on the findings in the Enquiry report, in support of his conclusion that the petitioner had cheated beneficiaries, tampered with office records, deceived banks and misappropriated corporation funds, in passing the order of punishment dated 17.01.1995. The petitioner, in his reply to the show cause notice, contended that the statement made by him earlier to the Assistant Manger (Housing) cannot form the basis for imposition of punishment since it did not form part of the record of the enquiry proceedings. It is true that the petitioner had not denied having made a statement to the Assistant Manager (Housing) and had merely stated that these were extraneous matters which should not have been taken as the basis to frame the charges against him and that no comparison should be made between the statement given by the petitioner to higher officials and a statement given in a regular domestic enquiry. However, Sri G.V.Shivaji, learned counsel for the petitioner would submit that the said conclusions of the Enquiry Officer regarding the alleged admission of the petitioner to the Assistant Manager (Housing) is erroneous and is not based on the evidence on record. Though records were called for to verify the statement made by the petitioner to the Assistant Manager (Housing). Sri K.Mohan Rami Reddy,

learned standing counsel for the respondent corporation, would submit that the said statement given by the petitioner to the Assistant Manager (Housing) is not available on record. In its absence it cannot be concluded that the petitioner had admitted the charges of mis-conduct levelled against him.

It is not in dispute that the beneficiaries, whose original complaint and their subsequent statements formed the basis for issuing the charge-sheet, and the officials of the respondent corporation, whose recorded statements were relied upon by the Enquiry Officer, were not subjected to cross-examination by the petitioner. Learned Standing Counsel would submit that the petitioner had never requested for being given an opportunity to cross-examine the witnesses and that he could not take advantage of his own wrong and contend that the enquiry stands vitiated for failure to give him an opportunity in this regard.

I am unable to accept this submission of the learned Standing Counsel. While strict rules of Evidence Act, undoubtedly, have no application to departmental enquiries, the burden of establishing charges, however, rests with the employer. It is for the employer to establish the charges, in a properly constituted domestic enquiry, after affording a reasonable opportunity to the delinquent employee to defend himself. Since the basic rules of natural justice require, an opportunity being given to the delinquent employee to cross-examine witnesses, whose statements have been recorded in support of the charges, it is for the Enquiry Officer to afford such an opportunity to the petitioner whether or not a specific request is made in this regard. If such an opportunity had been afforded and the delinquent employee had failed to avail the opportunity the situation would have been otherwise and it would then not have been open to the delinquent employee to contend that he was denied a reasonable opportunity of defending himself in the departmental enquiry. Failure of the delinquent employee to make a specific request to cross-examine witnesses is

of no consequence. Since the enquiry proceedings were conducted in violation of principles of natural justice and since the order imposing punishment of removal is based on such an enquiry, the impugned order is liable to be set aside.

Before parting with the case, it is necessary to record the Court's concern and anguish at the casual manner in which departmental enquiries are conducted. The present case is one such glaring example. The charges levelled against the petitioner include charges of misappropriation, forgery, impersonation, etc. that too of public funds meant for providing assistance to weaker sections of society. Failure to comply with the basic rules of natural justice, more often, than not, result in officials being let off scott free, which not only adds to the financial burden on the public exchequer, but also fosters a general belief and wide spread skepticism that the guilty would always go unpunished. It is, therefore, of utmost importance that care and caution is exercised in conducting departmental enquiries and necessary steps are taken to ensure that the required training is imparted on the procedural requirements of a valid domestic enquiry. Since the impugned order of punishment of removal is set aside, on the ground of violation of principles of natural justice, it is made clear that the respondents are not precluded from holding an enquiry afresh, and to thereafter take action against the petitioner in accordance with law, on the grave allegations levelled against him.

The writ petition is accordingly disposed of. No order as to costs.

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RAMESH RANGANATHA, J

Dated: 06-09-2005

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